



**TRUCKEE TAHOE AIRPORT DISTRICT
BOARD OF DIRECTOR STAFF REPORT**

**AGENDA TITLE: Response Letter to John Jones’ Cease and Desist Letter
Alleging Violation of Assembly Bill 922 and the Brown Act**

MEETING DATE: September 28, 2022

PREPARED BY: Josh Nelson, General Counsel

RECOMMENDED ACTION:

Approve sending John Jones a letter in response to his cease-and-desist letter dated September 5, 2022, alleging violation of Assembly Bill (AB) 992 and the Brown Act.

DISCUSSION:

On August 11, 2022, a media organization, Moonshine Ink, published an article entitled “In the Crosswinds” on its Facebook page. Numerous comments were made in response to the Facebook post, including Vice-President Diamond and the campaign for Director Hetherington. On September 8, 2022, the District received a letter dated September 5, 2022, from Mr. Jones, alleging that Director Hetherington violated AB 992 and the Brown Act by commenting on the Moonshine Ink Facebook post. Mr. Jones alleges:

Ms. Hertherington’s social media post constitutes a series of communications that discuss or deliberate on items of business that are within the subject matter jurisdiction of TTAD, by responding directly to a communication on an internet-based social media platform that was made, posted, or shared by another member of the TTAD, in apparent violation of the Act as amended by Assembly Bill No. 992 (Government Code Section 54952.2(b)(3)(A).

AB 992 amended Government Code section 54952.2 to prohibit a member of a legislative body from responding “*directly* to any communication on an Internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by another member of the legislative body.” Government Code section 54960.2 provides that prior to

filing a lawsuit to determine whether past actions of a legislative body constitute a violation of the Brown Act, any interested person must, within nine (9) months of the alleged violation, submit a “cease and desist” letter to the legislative body, clearly describing the past action and nature of the violation. To avoid civil liability, the legislative body must respond to the cease and desist letter within thirty (30) days after receipt by providing an unconditional commitment to cease and desist from the past action. Section 54960.2, subdivision (c)(3), provides that no legal action may thereafter be commenced regarding the past action for which the legislative body has provided an unconditional commitment.

In this case, the comments likely did not violate AB 992 or the Brown Act. First, it is unclear if Director Hetherington made or approved the comment by her campaign. If the comment was not made or directed by Director Hetherington, there was only one comment by a Director. Second, even assuming it was, the comments by Directors were not made in response to a third party’s comment rather than a direct response to each other. Nonetheless, and out of an abundance of caution, the response letter providing an unconditional commitment to cease and desist from the past action will shield the District from future civil liability if Mr. Jones decides to subsequently file a lawsuit under the Brown Act. In addition, the District takes Brown Act compliance very seriously, and this letter is consistent with this approach. Moreover, the District held a refresher training on the requirements of AB 992 at its August meeting.

WHAT’S NEXT: The Board should consider approving the response letter to Mr. Jones providing an unconditional commitment to cease and desist from the past action. Alternatively, the Board could decide not to approve the letter.

FISCAL IMPACT: Unknown. There is no foreseen fiscal impact.

ATTACHMENTS:

Proposed letter to Mr. Jones.